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File No. O Patents & Designs/47

Legal DEPARTMENT
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Subject:— P5F

Opinions under the Indian Patents

and Disigns Act, 1911

425-A

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It appears that Lt.Col.Bates is the orginator of the Indian Terracer Grader prepared by Messrs. M.Electrical and Mechanical Appliances Ltd., with the help of Mr. Mullenoux, Chief Engineer, G.I.P. Rly. The machinery is stated to be still in its preliminary stage and requires some modifications which are proposed to be carried out with the help of Ammunition Factory, Kirkee, By Mr.Mullenoux who has helped in designing the model and has also been paid Rs.500 for the same. The ideas used in the construction of the machine are stated to be of Lt.Col.Bates, but it is stated that the experiments were carried out when he was in the service of Government. In his letter , at page 1 ante, Lt.Col.Bates states:-

"It should be realised by Government that this machine is still only in an experimental stage and before it could be fit for production, a considerable amount of redesigning and development would be necessary, Government will, for some time, have neither the personnel nor the facilities in this section for carrying out such developments, not at the stage which mechanical cultivation has reached in this Province, do I consider it altogether advisable for Government to attempt such a project even were they inclined to do so.

The title to the present prote-type model rests entirely with Government with the proviso that if the present electrical circuit were used by Government or any manufacturing firm for the production of further models, it could only be done with the sanction of Messrs. Mullenoux and Mullenoux who have made taken out protection for this circuit.....

Finally, a reference to the case file for this project will show without any shadow of doubt that the original conception was mine. Naturally during the course of construction many modifications have taken place. Others have been raised, discussed and dropped. I am asking for no monetary award or recognition in any way. In my opinion the machine is still at far too elementary stage to be certain of its future.

There are however certain manufacturers in Britain who are definitely interested in my ideas and who might presumably be prepared to offer me employment to develop those ideas. I would like to be assured that I have the permission of the Government of Bombay and their goodwill to go ahead with these projects in Britain should the opportunity arise. I would therefore like some form of indemnity certificate from Government in due course saying that they have no claim on anything that I might produce at a future date."

The question for the consideration of the R.L.A. is whether in view of the fact that no patent has been yet obtained or applied for Lt.Col. Bates can be disallowed the right to use the ideas and results of experiments carried out at the expense of this Government which has

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spent about Rs.17000 on the incomplete machine.

Since no patent has been obtained nor applied for no action under the Patents and Designs Act, 1911, would be legally feasible at this stage. Lt.Col.Bates admits that the title to the present prote-type model rests entirely with Government. Consequently, if Government has the means to complete the construction of the machine permissi asked for by Lt. Col. Bates may be refused. If, however, Government has no such means; it may consider the advisability of permitting Lt. Col. Bates to carry on his experiments subject to certain reasonable conditions in addition to those which Government can avail of under sub-sections (2) to (4) of section 21 of the Patents and Designs Act,1911. At any rate the unqualified indemnity certificate asked for by Lt.ColBates should be refused.

Sd/-

Remembrancer of Legal Affairs.

U.R. to R.C.D. No.328-Confl.dated the 29th July 1947.

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Office of the R.L.A.

It is not clear from these papers on what point or points the Legal Department's opinion is required. It is however presumed that the R.L.A's advice is sought on (1) whether rule 7 of the rules adopted by the Provincial Industrial Research Committee is valid and (2) Whether from the drafting point of veiw it is in order .

It appears from sub-section 1A of section 10 and section 21A of the Patents and Designs Act, 1911, that an agreement to assign the benefit of the invention and of any patent would be legally feasible. Consequently Government may take a definite agreement from the private individuals working either at Government laboratory or at a private laboratory that he would assign the benefit of the research work financed by Government in consideration of payment of a share in the sale proceeds of his research work on the grant of a patent right. An agreement of this kind would be binding on such research worker. With regard to the research work carried on by Government servant the provisions of the B.C.S. Rules would be enough for the purpose. The draft rule may be worded as follows:-

" Patent rights in respect of ~~discoveries~~ discoveries or inventions resulting from research work organised or assisted out of grants made by the Provincial Government on the recommendations of the Committee shall be assigned to the Provincial Government which may at its discretion release such rights in favour of the general public or any set of industrialists. Research workers other than those who are in the service or employment of Government shall, before any financi assistance is granted to them for research, enter into an agreement wit the Provincial Government to the effect that (1) any patent rights resulting from their researches will be assigned to the Provincial Government and (2) that ~~x~~ they shall not publish the results of any discoveries or inventions before applying for a patent in respect of

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such discoveries or inventions. They shall further agree to share the benefits of the research, whether patented or not equally between themselves, the institution where the work is carried out and the Provincial Government."

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Remembrancer of Legal Affairs.

U.R. to Education and Industries Department, No.13264 dated the 22nd December 1947.

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